*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P. No. 13714 OF 2006

%Dated November 2nd , 2007

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Smt Kamili Sarojini, W/o late kamili Papaiah aged 65 years,
Occu. House hold, R/o 2nd Ward, Murthy Mahal Raod, Avanigadda,
Krishna District.

Petitioner

VERSUS

$ Indian Bank , Avanigadda Branch
Rep. By its Branch Manager, Avanigadda, Krishna District.

Respondent

!Counsel for Petitioner: Mr. C. Raghu ,dvocate

^Counsel for Respondent : Mr. Ajay Kumar

<GIST:

> HEAD NOTE:

? Cases referred
1. 1993 (2) ALT 274
2. 2001 (4) ALT 586
3. 2000 (2) ALT 218
4. 1999 (2) ALD 132

5. 1979 ALT 347
6. 2001 (2) ALD 379

HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NO. 13714 OF 2006

Between:

Smt Kamili Sarojini, W/o late Kamili Papaiah aged 65 years.

…Petitioner

AND

Indian Bank, Avanigadda Baranch, represented by its Branch Manager, Avanigadda, Krishna District.

…….Respondent

HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NO. 13714 OF 2006

ORAL ORDER:

1. This Court ordered notice before admission on 6.7.2006. The respondent filed counter affidavit. At the request of the counsel representing the parties, the Writ Petition itself is being finally disposed of.

2. Sri C.Raghu, the learned counsel representing the Writ Petitioner had taken this Court through the respective pleadings of the parties and had drawn the attention of this court to paragraph 8 of the affidavit filed by the respondent and would maintain that in the facts and circumstances of the case

insisting for obtaining a probate of the Will from a competent court may not be justified. The learned counsel also placed reliance on certain decisions and would submit that in the peculiar facts of the case, at the best the respondent be directed to receive the indemnity body from the petitioner in this regard and nothing beyond thereto can be demanded by the respondent.

3. The learned counsel representing the respondent-Indian Bank however, would maintain that the banking institution is expected to follow the procedure and hence, the respondent institution has been insisting upon the production of probate of the will from a competent court.

4. Heard the learned counsel.

5. The Writ Petition is filed for a Writ of Mandamus or any other appropriate writ, order or direction, declaring the Letter dated 18.4.2006 addressed by the respondent Bank insisting for obtaining a probate of a Will from a competent Court since all the legal heirs did not submit the declaration forms is illegal, arbitrary and further direct the respondent-Bank to permit the petitioner to repay the loan amount and hand over the ornaments that were pledged against the loan Account No. 1628 and also permit the petitioner to withdraw the amount lying in the Account No. 55.

6. The petitioner Smt. Kamili Sarojini states that her husband

late Sri Kamili Papaiah during his life time availed gold loan No. 1628 and also had been operating Account No.55 since 25 years in the respondent – Bank. The gold ornaments that have been pledged by her husband belong to her. The amount of loan availed by her husband was Rs.80,000, that during his life time he paid the part amount and the balance amount has to be repaid by her.

7. It is further stated by the petitioner that her husband expired on 26-8-2005, that during his life time he executed notarized Will dated 28-3-2005. The petitioner's son is working in State Financial Corporation and is well settled and her daughter is already married and living separately at Vijayawada. As per the notarized Will, the petitioner was to clear the gold loan availed by her husband and take the ornaments pledged as a surety for the loan. She is also entitled to take the balance amount existing in Account No.55 with the respondent – Bank. The children of the petitioner have not objected to the said Will.

8. It is also stated that the petitioner had made a claim before the respondent – Bank submitting the Will and claiming return of gold ornaments and the amount lying in the account of her husband and offered to repay the entire loan amount. Pursuant to the same, the respondent – Bank addressed a letter to the petitioner stating that since there is a Will executed by her husband, she has to submit fresh claim forms. The petitioner

accordingly submitted fresh claim forms enclosing the copy of the Will. After receiving the same, the respondent – Bank has again addressed letter dated 18-4-2006 stating a new reason that since she had submitted the declaration of the other legal heirs, she has to obtain a probate from the competent court in relation to the notarized Will which she has submitted along with the claim application.

9. It is the case of the petitioner that her husband died in August 2005 and that till now her children have not raised any objection with regard to the contents of the Will nor made any claim with the respondent – Bank. It is also her case that they did not question the said Will before any competent court. Therefore, according to the petitioner, the respondent – Bank has to rely upon the Will submitted by her and allow her to clear off the loan and take the gold ornaments.

10. It is also stated by the petitioner that she belongs to Hindu Religion and the testator being a Hindu, the Will need not be probated and, therefore, she need not obtain any probate for discharging the loan and to take back the ornaments that were pledged by her late husband at the time of availing the loan and that the action of the respondent – Bank is illegal and arbitrary. Hence, the Writ Petition.

11. The respondent filed counter affidavit, it is stated that it is true that the husband of the petitioner, who is now deceased, availed a gold loan from the respondent bank and pledged gold

ornaments for availing the said loan amount. Certain facts were not specifically denied and relating to certain facts want of knowledge on the part of the banking institution has been averred.

12. It is averred in paragraph seven of the counter affidavit that after the death of the borrower i.e., the husband of the petitioner, the petitioner was supposed to file a fresh claim along with the required documents i.e. declaration by the legal heirs, family member certificate issued by MRO and the thumb impression of the petitioner was to be attested by the Magistrate/ or a notary public under his official seal. These were the requirements, which the petitioner had to fulfill in order to claim the pledged Gold Ornaments, which was also informed to the petitioner orally. On not receiving the said documents along with the claim dated 14.3.2006, the Bank sent a letter dated 18.4.2006 again mentioning the requirement.

13. In paragraph eight of the counter affidavit, it is stated that it may be true that there is no objection raised by the petitioner's son and the daughter in this regard but it is a pre requisite condition to be abide by everyone who enters into a Loan Agreement with the Respondent Bank and in such circumstances to avoid any future claims from any other party or relative or legal heir, against the bank, the said documents are necessary to be filed by the legal heirs. That it is a requirement and a procedure that may have to be followed and the same is required in order to protect the interest of the

bonafide legal heirs of the borrowers as well as that of the bank.

14. Further it is averred in paragraph 10 that the respondent Bank had given only an alternative to the petitioner to submit a probate of the Will incase they don't file a declaration by the legal heirs of the deceased. That the Respondent Bank asked for the said documents as the same are required in terms of the safeguards to protect the interest of all the parties concerned in such circumstances, lest the bank may be drawn into un necessary litigation and claims from the relatives of the deceased and third parties.

15. As can be seen from the respective stands taken by the parties, the relationship of the petitioner and her deceased husband is not in serious dispute. The fact that the son and the daughter are not raising any objection also appears to be not in serious controversy. Most probably, the respondent Banking Institution, to safeguard the interest of the banking institution and also all those who may be concerned with the deceased husband of the petitioner might have made such a demand through correspondence which had been referred to supra.

16. In BRANCH MANAGER, STATE BANK OF HYDERABAD VS. GADIRAJU RAMA BHASKARA VISWANADHA RAJU[1], the learned Judge of this Court at paragraphs 3,4 and 5 observed as under:

"it is relevant to note section 214 of the Indian Succession Act, which reads thus:

(1) No Court shall-

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming or succession to be entitled to the effects of the deceased person or to any part thereof; or

(b) proceed upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of –

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under Section 31 of Section 32 of the Administrator-General's Act, 1913, and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889, or

(v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted, after the first day of May, 1889, having the debt specified therein.

(2) The word 'debt' in sub-section (1) includes any debt

except rent, revenue or profits payable in respect of land used for agricultural purposes."

A reading of this section makes it clear that no Court shall pass a decree against a debtor of a deceased person for payment of his debt, or execute a decree obtained by the deceased person except on production of a probate, letters of administration, of a succession certificate, etc.

In this case, the appellant-Bank is not a debtor of the deceased-Gandiraju Subbaraju. Therefore, the question of submitting a probate or letters of administration or a Succession Certificate does not arise.

The Orissa High Court in Branch Manager, SBI Puri Vs. Satyaban Pathal observed that Succession Certificate can be granted on an application under Section 372 of the Indian Succession Act in respect of a debt or a security. Interpreting Section 370 of the Indian Succession Act, which defines security as any pronote, debenture, stock or other security of Central or State Government, any bond, any stock or debenture or share in a company etc., the Court held that articles pledged do not come within any of the categories mentioned above and as such, gold articles pledged with the Bank cannot be held as securities and hence, the question of obtaining a Succession Certificate does not arise. I am in entire agreement with the view expressed by the learned Judge in the reported case. Therefore, viewed from any angle, it is clear that the Bank has no jurisdiction to insist upon production of a Succession

Certificate or letters of administration or probate in this case. Therefore, the Second Appeal is devoid of merits. No question of law much less substantial question of law arises in this appeal."

17. Strong reliance was placed in S.MALDI REDDY VS. M. RAMAKRISHNA REDDY[2], ROHINI VS. ALL CONCERNED[3], MASIMUKKULA NARAYANA AND OTHERS VS. MASIMUKKULA SURYAKANTHAM[4], A.S.MURTHY VS. D.V.S.S. MURTHY[5] AND GANGAVATH LALU VS. GANGAVATHI TULSI[6] to substantiate the stand that obtaining of probate may not be necessary. It is no doubt true that the Banking institutions are expected to follow the procedure so as to safeguard the interest of borrowers, the deceased borrowers, the legal heirs of such borrowers and the claims if any which would be made by the legal heirs of such deceased borrowers in relation to the banking transactions.

18. In the light of the facts and circumstances, this court is of the considered opinion the bonafidies of the writ petitioner can not be doubted in any way especially in the light of the stand taken even by the respondent Banking institution that the son and the daughter of the Writ Petitioner are not raising any objection in relation thereto.

19. Hence, in the light of the aforesaid facts, this court is of the considered opinion that the respondent Bank be directed to permit the petitioner to repay the loan amount and handover the

ornaments that were pledged against the loan Account No. 1628 and also permit the petitioner to withdraw the amounts lying in the Account No. 55 on obtaining an indemnity bond in this regard from the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

20. Accordingly, the Writ Petition is allowed subject to the above direction. No order as to Costs.

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P.S. NARAYANA, J

Date: . .2007
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[1] 1993 (2) ALT 274
[2] 2001(4) ALT 586
[3] 2000(2) ALT 218
[4] 1999 (2) ALD 132
[5] 1979 ALT 347
[6] 2001 (2) ALD 379